Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHUL JIN YOO, SANG GOOK KIM and
DANIEL YONGSUK PAHNG

Appeal No. 2002-1753
Application No. 09/243,451

ON BRIEF

Before KRASS, BLANKENSHIP and SAADAT, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1, 3, 8-14 and 16. Claims 2 and 15 have been canceled and claims 4-7 and 17-20 have been indicated by the examiner as being directed to allowable subject matter.

The invention is directed to a guidance and management system for a parking lot. In particular, the invention uses graphical displays at various locations in a parking

facility to inform users regarding the location of available parking spaces. Graphical, rather than numerical, displays, are said to enable users to more easily locate an advantageous and convenient parking spot, while owners of the facilities can generate revenues to offset costs by providing the graphical displays for advertising.

Representative independent claim 1 is reproduced as follows:

> 1. A guidance system for a parking facility having a plurality of parking spaces for which the occupancy of at least some of said spaces cannot readily be visually detected by a user at an entrance to said facility, said system comprising:
>
> a plurality of monitored parking spaces equipped with sensors to detect the presence of a vehicle in one of said monitored spaces,
>
> a first display at a main entrance to said facility, said first display providing information about the location of available spaces in said facility,
>
> a plurality of second displays disposed at entries to particular areas of said facility, said second displays providing information about the location of available spaces in said areas,
>
> a plurality of third displays disposed at a plurality of locations within said facility, said third displays providing information about the availability of spaces in areas near said third displays
>
> at least one of said first, second and third displays is equipped to display advertising in addition to information about parking space availability.

The examiner relies on the following references:

Becker	5,297,252	Mar. 22, 1994
Jackson	5,432,508	Jul. 11, 1995

Claims 1, 3, 8-14 and 16 stand rejected under 35 U.S.C. §103 as unpatentable over Jackson in view of Becker.

Reference is made to the briefs and answer for the respective positions of appellants and the examiner.

OPINION

At the outset, we note that the examiner has filed an examiner's answer subsequent to appellants' reply brief. The rules do not provide for this additional answer and it is improper for the examiner to file it. In this case, it is harmless because the answer is the same, in all aspects, as the original answer but for an indication, in the second answer, that the statement of the status of the claims contained in the brief is not correct.

With regard to independent claim 1, the examiner indicates that Jackson substantially discloses the claimed subject matter, including one or more displays, but that Jackson does not indicate that the displays are equipped to display advertising in addition to information about parking space availability.

The examiner turns to Becker for a disclosure of a color graphic terminal for monitoring an alarm system and concludes that it would have been obvious to include Becker's graphic monitor 4, which is equipped to display advertising, into the system of Jackson "in order to make the technique for facilitating and monitoring vehicle parking

more effective to apply to the parking guidance and management system" (answer-page 4).

Appellants' position is that there is no basis at all in the Becker reference for its use as a teaching of advertising because the reference nowhere mentions or suggests an advertising display and that it would be inappropriate to include advertising in Becker's display because it involves a display for directing emergency personnel to a trouble scene and it is also directed to a very limited audience.

The examiner does not dispute appellants' arguments as to what Becker shows . The examiner only cites the graphics windows of Becker and states that each of the windows "can" be used to display advertising "such as marquee display which rolling in the message windows 34 and 36 or banner-headline on the main graphics window 26 to display any advertising" [sic] (answer-page 7).

The examiner's reasoning here is flawed. Merely because one "can" do what an applicant has done is not a proper basis on which to base an obviousness rejection. One must show some teaching in the prior art or some reason, based on the experience of skilled artisans, why the artisan would have been led to make a modification which would have resulted in the claimed subject matter. Such reason much stem from some teachings, suggestions or implications in the prior art as a whole

or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc. , 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984).

While the examiner's reliance on Becker for a teaching of advertising appears to be misplaced, the examiner also states, at page 7 of the answer, that "[t]o add 'advertising' to any display would have certainly been obvious, if not inherent and could certainly not be the difference in determining patentability." We agree that it would have been obvious to include advertising messages in the displays of Jackson's parking management system.

Appellants argue that the claims recite much more than simply a graphical monitor; rather they recite "a non-numerical depiction of parking space availability" (reply brief-page 2). Appellants point out that Jackson not only does not teach inclusion of advertising or graphical information on the displays disclosed therein, but Jackson, at column 7, lines 21-26, clearly discusses the "numerical" nature of the information of the displays contemplated.

We agree that Jackson's preferred embodiment contemplates the use of numerical information rather than graphical information. This is seen at column 7, lines 5 et seq., where the main display 70 is said to give vehicle operators "information" about the availability of parking spaces in each area and where area displays 72 are said to "communicate parking availability information." Of course, "information" could be any type of information, including graphical, but Jackson explains, further down in column 7, lines 21-30, that the main display and area displays may inform vehicle operators of parking availability "by presenting the percentage occupancy of each level" or by displaying "the actual number of available parking spaces on each level." External display 73 is said to indicate "the total [number of] spaces available" (line 29). Such disclosures appear to indicate that Jackson contemplates numerical displays, as alleged by appellants.

However, the artisan is more than a layman (Graham v. John Deere, 383 U.S. 1, 148 USPQ 459 (1966) and must be presumed to be able to exercise a minimum of skill (In re Sovish, 769 F.2d 738, 226 USPQ 771 (Fed. Cir. 1985)), knowledge (In re Jacoby, 309 F.2d 513, 135 USPQ 317 (CCPA 1962)) and common sense (In re Bozek, 416 F.2d 1385, 163 USPQ 545 (CCPA 1969)) in adapting a reference to various situations.

While Jackson may have a preference for numerical displays, the artisan, at the time of Jackson's invention, clearly knew of alphanumeric displays, as evidenced by Jackson's use of such displays at the cashier's terminal (column 7, lines 35-37) for

communicating a "brief message" (line 41). Jackson preferred numerical displays because Jackson was only interested in displaying numerical information to vehicle operators, indicative of the number of parking spaces available. However, the artisan would have been expected to know that Jackson's main and area displays may display any information, or type of information, desired, from numerical to alphanumerical to other types of graphical information (alpha symbols clearly being a type of graphical display).

We find no patentable distinction over Jackson in appellants' use of known displays of alphanumeric and/or graphical information in order to display advertising, or other types of, messages (claims 1 and 19) or other non-numerical information (claims 12 and 19) on the main and area displays of Jackson. We find Becker to be merely cumulative of Jackson in teaching messages/graphics to be displayed on a color display.

Accordingly, we will sustain the rejection of independent claims 1, 12 and 19 under 35 U.S.C. §103.

Turning to claim 3, appellants urge that the use of a "light array" for the claimed "third display" distinguishes over Jackson. We agree with the examiner that Jackson clearly discloses a third display device 50 mounted on the ceiling 26 in aisle 30 in front of space 28, wherein display 50 indicates that the space associated with the display is

not occupied and the display can be easily perceived from a distance. We also agree with the examiner that while Jackson does not explicitly disclose the display as being arranged as a "light array," it would have been obvious to use such a display since light arrays were but one of many types of displays known to artisans at the time of appellants' invention. Appellants do not present any convincing evidence that such light arrays were not known at the time or that it would not have been obvious to use such a display because of certain circumstances. In fact, appellants admit that Jackson uses displays for indicating numerical information. Clearly, light arrays, such as the well known Figure-8 arrangement of diodes in an LED display, were known to display alphanumerical information.

Thus, we will sustain the rejection of claim 3 under 35 U.S.C. §103.

With regard to claims 8, 10 and 13, these claims are directed to the display of occupancy information and advertising. Appellants urge that Jackson's display of numerical information would not meet language of these claims because appellants believe that "customers can much more quickly absorb information which is presented in graphical formats than in a numerical or percentage format" (principal brief-page 7).

We understand the differences between the instant invention and that depicted by Jackson. However, for the reasons supra, we find that it would have been obvious to artisans, within the meaning of 35 U.S.C. §103, to have employed the displays in Jackson for disseminating the claimed information.

Therefore, we will sustain the rejection of claims 8, 10 and 13 under 35 U.S.C. §103.

Appellants argue, with regard to claims 9 and 11, that these claims are specific to the idea of having a graphic display in which there is a discrete indication for each space monitored in the facility and that the examiner has ignored this limitation.

The examiner's only response, at page 8 of the answer, is to point to graphic monitor 4 of Becker as having a "discrete indication as graphics windows 26 which is an interactive field that holds a selected graphic display such as building profile, floor plans, zone plans, and facility overview." The examiner concludes that the display of Becker "can be used to display both location information and information regarding relative numbers of availability and unavailable monitored space in the parking facility" (emphasis added).

Again, merely because something "can" be used is not an indication of obviousness unless it can be shown that something in the prior art or in the experience of a skilled artisan would have suggested its use in the environment sought to be modified. In the instant case, the examiner has not convinced us of any reason for the artisan to have taken the teaching of Becker's graphic monitor showing floor plans, etc. and adapt the parking management system of Jackson with it to somehow include a "discrete indication for each monitored space in said facility, said graphic information

including both locational information and information regarding relative numbers of available and unavailable monitored spaces in said facility."

Accordingly, we will not sustain the rejection of claims 9 and 11 under 35 U.S.C. §103.

With regard to claim 14, appellants argue that this claim is specific to the kind of advertising display used and that the examiner has not shown this to have been taught in the prior art. The claim calls for the advertising to be in a form of either "a static poster-type display," "a moving text display," or "a dynamic video display."

As explained supra, while Jackson may not explicitly disclose a certain type of display, the artisan is presumed to know something about the art in addition to what a reference explicitly discloses. In the instant case, once it is determined that the artisan would have found it obvious to present advertising messages on the display of Jackson, the artisan would have been familiar with the types of displays recited in claim 14 and would have found it obvious to employ such well known displays for displaying a message. Appellants have presented nothing to convince us that something would have led the artisan away from using any one of these well known displays.

Thus, we will sustain the rejection of claim 14 under 35 U.S.C. §103.

We will also sustain the rejection of claim 16 under 35 U.S.C. §103 since appellants do not separately argue the merits of this claim.

We have sustained the rejection of claims 1, 3, 8, 10, 12-14 and 16 under 35 U.S.C. §103 but we have not sustained the rejection of claims 9 and 11 under 35 U.S.C. §103.

Accordingly, the examiner's decision is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

ERROL A. KRASS Administrative Patent Judge	)))))) BOARD OF PATENT
HOWARD B. BLANKENSHIP Administrative Patent Judge	) APPEALS) AND) INTERFERENCES
MAHSHID D. SAADAT Administrative Patent Judge	)))))

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